

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2010-0713-01E
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For use by Office of Administrative Law (OAL) only

2010 JUL 13 AM 11:19
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Food and Agriculture

AGENCY FILE NUMBER (if any)
PH10054

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) European Grapevine Moth Interior Quarantine	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3437
	REPEAL
TITLE(S) 3	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Susan McCarthy	TELEPHONE NUMBER (916) 654-1017	FAX NUMBER (Optional) (916) 654-1018	E-MAIL ADDRESS (Optional) smccarthy@cdfa.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 7.8.10
TYPED NAME AND TITLE OF SIGNATORY Will Brown, Undersecretary	

In Title 3, Division 4, Chapter 3, amend Section 3437 to read:

Section 3437. European Grapevine Moth Interior Quarantine.

A quarantine is established against the following pest, its hosts and possible carriers.

(a) Pest. European Grapevine Moth (*Lobesia botrana*).

(b) Area Under Quarantine.

(1) In Fresno County. Continued

(2) In Mendocino County. Continued

(3) In the County of Merced. Continued

(4) In Lake, Napa, Solano and Sonoma counties. Beginning at the intersection of Brack Rd and Chemise Rd; then, starting easterly along Chemise Rd to its intersection with 38.647689 latitude and -122.948557 longitude; then, northeasterly along an imaginary line to its intersection with Jochinsen Rd and Wine Creek Rd; then, northeasterly along Wine Creek Rd to its intersection with Grape Creek; then, starting northeasterly along said creek to its intersection with W Dry Creek Rd; then, starting northeasterly along said road to its intersection with an unnamed road at 38.661056 latitude and -122.940972 longitude; then, northeasterly along said road to its intersection with Dry Creek; then, southeasterly along said creek to its intersection with an unnamed road at 38.659998 latitude and -122.936563 longitude; then, northeasterly along said road to its intersection with Dry Creek Rd; then, northwesterly along said road to its intersection with 38.668829 latitude and -122.932543 longitude; then, northeasterly along an imaginary line to its intersection with Petersen Creek at 38.689261 latitude and -122.902306 longitude; then, starting southeasterly along said creek to its intersection with Geysersville Av; then, southeasterly along said avenue to its intersection with W C Meyer Rd; then, easterly along said road to its intersection with an unnamed road; then, northerly along said road to its intersection with the Russian River; then, starting southeasterly along said river to its intersection with an unnamed road at 38.682033 latitude and -122.853146 longitude; then, northeasterly along said road to its intersection with State Hwy 128; then, southeasterly along said road to its intersection with Geysers Rd; then, starting northeasterly along said road to its intersection with Red Winery Rd; then, starting southeasterly along said road to its intersection with Squibb Rd; then,

northeasterly along said road to its northeastern most point; then, southeasterly along an imaginary line to its intersection with Pine Flat Rd and Chapman Branch; then, starting northwesterly along Chapman Branch to its intersection with Pena Creek; then, starting northeasterly along Pena Creek to its intersection with 38.695165 latitude and -122.980643 longitude; then, northwesterly along an imaginary line to its intersection with Fall Creek Rd at 38.697796 latitude and -122.986696 longitude; then, starting northeasterly along Fall Creek Rd to its intersection with Fall Creek; then, starting northeasterly along Fall Creek to its intersection with Dry Creek; then, starting southeasterly along Dry Creek to its intersection with Dutcher Creek; then, starting northwesterly along Dutcher Creek to its intersection with Dry Creek Rd; then, southwesterly along Dry Creek Rd to its intersection with Dutcher Creek Rd; then, starting northerly along Dutcher Creek Rd to its intersection with Kemp Rd; then, starting easterly along Kemp Rd to its eastern most point; then, northeasterly along an imaginary line to its intersection with Dry Creek Ridge Rd at 38.733290 latitude and -122.964887 longitude; then, northeasterly along an imaginary line to its intersection with Rich Ranch Rd at 38.735135 latitude and -122.962372 longitude; then, starting easterly along Rich Ranch Rd to its intersection with Seghes Rd; then, starting northerly along Seghes Rd to its intersection with Chianti Rd; then, starting northeasterly along an imaginary line to its intersection with Geyserville Ave and an unnamed road at 38.738639 latitude and -122.946148 longitude; then, starting northeasterly along the unnamed road to its intersection with the Russian River; then, northeasterly along an imaginary line to the intersection of River Rd and Vanoni Ln; then, starting northeasterly along Vanoni Ln to its northeastern most point; then, northeasterly along an imaginary line to its intersection with Pocket Ranch Rd at 38.750126 latitude and -122.914444 longitude; then, starting northerly along Pocket Ranch Rd to its intersection with Ridge Oaks Rd; then, starting northeasterly along Ridge Oaks Rd to its intersection with Bridge Oaks Rd; then, starting southeasterly along Bridge Oaks Rd to its intersection with Ridge Ranch Rd; then, southeasterly along an imaginary line to its intersection with Little Sulphur Creek at 38.758907 latitude and -122.873450 longitude; then, starting southeasterly along Little Sulphur Creek to its intersection with Lovers Gulch Creek; then, southeasterly along an imaginary line to its intersection with the northwestern most point of Sausal Creek; then,

starting southeasterly along Sausal Creek to its intersection with Pine Flat Rd; then,
starting northeasterly along Pine Flat Rd to its intersection with Deer Creek; then,
northeasterly along an imaginary line to its intersection with the northwestern most point
of Bluegum Creek; then, starting southeasterly along said creek to its intersection with
McDonnell Creek; then, starting southeasterly along said creek to its intersection with
Maacama Creek then, starting southerly along said creek to its intersection with State
Hwy 128; then, starting northeasterly along State Hwy 128 to its intersection with
Bechaud Rd; then, northeasterly along Bechaud Rd to its northeastern most end; then,
northeasterly along an imaginary line to its intersection with the westernmost beginning
of Ida Clayton Rd; then, starting easterly along Ida Clayton Rd to its intersection with
38.675388 latitude and -122.656858 longitude; then, southeasterly along an imaginary
line to its intersection with Kellogg Creek and the Robert Louis Stevenson State Park
boundary line; then, starting northerly along the Robert Louis Stevenson State Park
boundary line to its intersection with the Sonoma County boundary line; then, starting
southeasterly along the Sonoma County boundary line to its intersection with the Napa
County boundary line; then, northeasterly along the Napa County boundary line to its
intersection with State Hwy 29; then, northeasterly along an imaginary line to its
intersection with the westernmost end of Oak Hill Rd; then, northeasterly along Oak Hill
Rd to its intersection with Oat Hill Rd; then, northerly along Oat Hill Rd to its
intersection with Butts Canyon Rd; then, starting northerly along Butts Canyon Rd to its
intersection with Guenoc Rd; then, northeasterly along Guenoc Rd to its intersection with
Bucksnort Creek; then, southeasterly along Bucksnort Creek to its intersection with
38.729896 latitude and -122.514910 longitude; then, easterly along an imaginary line to
its intersection with Butts Canyon Rd at 38.730001 latitude and -122.514564 longitude;
then, starting northeasterly along Butts Canyon Rd to its intersection with 38.748925
latitude and -122.453303 longitude; then southeasterly along an imaginary line to its
intersection with Putah Creek at 38.705648 latitude and -122.384177 longitude; then
starting southerly along Putah Creek to its intersection with the Lake Berryessa
Recreation Area boundary line; then, starting southerly along the Lake Berryessa
Recreation Area boundary line to its intersection with Steele Canyon Rd at 38.491657
latitude and -122.196591 longitude; then, starting southeasterly along an imaginary line

to its intersection with the Lake Berryessa Recreation Area boundary line and Wragg Canyon Rd; then, starting southeasterly along Wragg Canyon Rd to its intersection with State Hwy 128; then, starting southeasterly along State Hwy 128 to its intersection with Old Suisun Knoxville Rd; then, southeasterly along an imaginary line to its intersection with Blue Ridge Rd and Gates Canyon Rd; then, starting easterly along Gates Canyon Rd to its intersection with Pleasants Valley Rd; then starting southeasterly along Pleasants Valley Rd to its intersection with Foothill Dr; then, starting southeasterly along Foothill Dr to its intersection with Alamo Dr; then, starting southeasterly along Alamo Dr to its intersection with Peabody Rd; then, starting southerly along Peabody Rd to its intersection with Air Base Pkwy; then, starting westerly along Air Base Pkwy to its intersection with the boundary of Fairfield City at 38.272382 latitude and -121.975093; then, starting southerly along said boundary to its intersection with Petersen Rd; then, westerly along said road to its intersection with Lawler Ranch Pkwy; then, starting southerly along said parkway to its intersection with State Hwy 12; then, starting southeasterly along said highway to its intersection with Scally Rd; then, southwesterly along an imaginary line to its intersection with Grizzly Island Rd and the northern shoreline of Montezuma Slough; then, starting westerly along said shoreline to its intersection with Grizzly Bay; then, southwesterly along Grizzly Bay to its intersection with western shore of Suisun Bay; then, starting southerly along the western shore of Suisun Bay to the Carquinez Straight; then, starting southwesterly along the Carquinez Straight to San Pablo Bay; then, starting northerly along the shore of San Pablo Bay to the Petaluma River; then, starting northwesterly along the Petaluma River to its intersection with Adobe Creek; then, starting easterly along Adobe Creek to its northernmost end; then, northeasterly along an imaginary line to the southwestern most point of the Glen Ellen City boundary line; then, northwesterly along an imaginary line to the southernmost end of South Fork Matanzas Creek; then, starting southwesterly along South Fork Matanzas Creek to its intersection with Sonoma Mountain Rd; then, starting westerly along Sonoma Mountain Rd to its intersection with Pressley Rd; then, northwesterly along an imaginary line to its intersection with the southernmost end of Hidden Oaks Rd; then, northwesterly along an imaginary line to its intersection with the southernmost end of Hidden Acres Rd; then, northerly along Hidden Acres Rd to its

intersection with Hidden Springs Rd; then, starting northwesterly along Hidden Springs Rd to its intersection with Peracca Rd; then, westerly along Peracca Rd to its intersection with Grange Rd; then, starting northerly along Grange Rd to its intersection with Matanzas Creek; then, starting westerly along Matanzas Creek to its intersection with Bennett Valley Rd; then, starting northwesterly along Bennett Valley Rd to its intersection with Yulupa Ave; then, starting northwesterly along Yulupa Ave to its intersection with Bethards Dr; then, starting northeasterly along Bethards Dr to its intersection with Summerfield Rd; then, ~~starting northerly along Summerfield Rd to its intersection with Montgomery Dr; then, northeasterly along Montgomery Dr to its intersection with Mission Blvd; then, starting northwesterly along Mission Blvd to its intersection with Montecito Blvd; then, starting southwesterly along Montecito Blvd to its intersection with Fountain Grove Pkwy; then, starting northwesterly along Fountain Grove Pkwy to its intersection with Industrial Dr; then, starting westerly along Industrial Dr to its intersection with Cleveland Ave; then, starting southeasterly along Cleveland Ave to its intersection with Piner Rd; then, starting westerly along Piner Rd to its intersection with Marlow Rd; then, starting southerly along Marlow Rd to its intersection with Stony Point Rd; then, starting southerly along Stony Point Rd to its intersection with State Hwy 12; then, southwesterly along State Hwy 12 to its intersection with N Wright Rd; then, southerly along N Wright Rd to its intersection with S Wright Rd; then, southerly along S Wright Rd to its intersection with Ludwig Av; then, starting westerly along Ludwig Av to its intersection with Llano Rd; then, starting northwesterly along Llano Rd to its intersection with State Hwy 12; then, southwesterly along State Hwy 12 to its intersection with Petaluma Ave; then, southeasterly along Petaluma Av to its intersection with Gravenstein Av; then, southeasterly along Gravenstein Av~~ Creekside Rd; then starting northwesterly along Creekside Rd to its intersection with Cypress Way; then, starting northwesterly along Cypress Way to its intersection with Hoen Frontage Rd; then, southwesterly along Hoen Frontage Rd to its intersection with State Hwy 12; then, southwesterly along State Hwy 12 to its intersection with Santa Rosa Ave; then, southerly along Santa Rosa Ave to its intersection with Petaluma Hill Rd; then, starting southeasterly along Petaluma Hill Rd to its intersection with Yolanda Ave; then, westerly along Yolanda Ave to its intersection with US Hwy 101; then, southerly along US Hwy

101 to its intersection with Todd Rd; then, starting westerly along Todd Rd to its intersection with and unnamed road at 38.383101 latitude and -122.779713 longitude; then, westerly along the unnamed road to its westernmost end; then, westerly along an imaginary line to its intersection with the easternmost end of James Ln; then, westerly along James Ln to its intersection with Cooper Rd; then, starting northerly along Cooper Rd to its intersection with Gravenstein Ave; then, northwesterly along Gravenstein Ave to its intersection with Lynch Rd; then, starting westerly along Lynch Rd to its intersection with Pleasant Hill Rd; then, northwesterly along Pleasant Hill Rd to its intersection with Pillow Rd; then, southwesterly along Pillow Rd to its westernmost end; then, southwesterly along an imaginary line to its intersection with the easternmost end of Starlight Ln; then, southwesterly along Starlight Ln to its intersection with Watertrough Rd; then, northwesterly along an imaginary line to its intersection with Benvenuto Ln; then, starting southwesterly along Benvenuto Ln to its intersection with Spring Hill School Rd; then, westerly along Spring Hill School Rd to its intersection with Bodega Hwy; then, starting southwesterly along Bodega Hwy to its intersection with Jonive Rd; then, starting northwesterly along Jonive Rd to its intersection with Occidental Rd; then, starting northwesterly along Occidental Rd to its intersection with Facendini Ln; then, starting northwesterly along Facendini Ln to its intersection with Tanuda Rd; then, starting northerly along Tanuda Rd to its intersection with Harrison Grade Rd; then, starting easterly along Harrison Grade Rd to its intersection with Stoetz Ln; then, starting northwesterly along Stoetz Ln to its northernmost end; then, northeasterly along an imaginary line to its intersection with Greenwood Ln and Green Valley Rd; then, starting westerly along Green Valley Rd to its intersection with Pocket Canyon Rd; then, starting northwesterly along Pocket Canyon Rd to its intersection with Old Fellows Park Rd; then, starting northeasterly along Old Fellows Park Rd to its intersection with the Russian River; then, starting northeasterly along the Russian River to its intersection with River Rd; then, starting southwesterly along River Rd to its intersection with McPeak Rd; then, starting northwesterly along McPeak Rd to its intersection with Sunnyside Dr; then, northeasterly along an imaginary line to its intersection with Mount Jackson Resort Rd at 38.538271 latitude and -122.941874 longitude; then, starting southwesterly along Mount Jackson Resort Rd to its intersection with Sweetwater Springs Rd; then, starting

northwesterly along Sweetwater Springs Rd to its intersection with McCray Ridge Rd; then, northeasterly along an imaginary line to its intersection with Cloud 8 Rd and Palmer Creek Rd; then, starting northeasterly along Palmer Creek Rd to its intersection with Mill Creek Rd; then, starting westerly along Mill Creek Rd to its intersection with Soward Ranch Rd; then, northerly along an imaginary line to the point of the beginning.

(c) [no change]

(d) [no change]

Note: Authority: Sections 407 and 5322, Food and Agricultural Code

Reference: Sections 407, 5322, 5761, 5762 and 5763, Food and Agricultural Code

July 8, 2010

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the existence of *Lobesia botrana*, European Grapevine Moth (EGVM), in California.

The current emergency action to expand the regulated area is due to new detections in Sonoma County. The Secretary finds that the immediate amendment of a regulation to expand an existing quarantine is necessary to prevent or mitigate the emergency and to avoid serious harm to the public general welfare. On May 1, May 7 and June 24, 2010 (Pest and Damage Records (PDR#s 1598627, 1586239 and 1586301) adult male EGVM were trapped in Geyserville area of Sonoma County. These EGVM were trapped within three miles of one another and within one life cycle. This meets the regulatory protocol for expanding the quarantine in this area of Sonoma County. On July 6, 2010, (PDR#1586309) two adult male moths were trapped in the Santa Rosa area of Sonoma County. This meets the regulatory protocol for expanding the quarantine in this area of Sonoma County.

First generation EGVM larvae feed on bud clusters or flowers and spin webbing around them before pupating inside the web or under a rolled leaf. If heavy flower damage occurs during the first moth generation, the affected flowers will fail to develop and yield will be low. Second generation larvae enter the grapes and feed before pupating inside the grape. Larvae of the third generation, the most damaging, feed on ripening grapes, migrating from one to another and spinning webs. When berries are a little desiccated, the larvae penetrate them, bore into the pulp, and remain protected by the berry peel. Larvae secure the pierced berries to surrounding ones by silk threads in order to avoid falling. Each larva directly damages several berries (one to six), but if the conditions are suitable for fungal or acid rot development, a large number of surrounding berries may also be affected. The third generation larvae leave the fruit and seek shelter under the bark, among dead leaves, or between clods of earth, where they pupate before overwintering.

California's 844,000 acres of grapes (526,000 acres of wine grape, 93,000 acres of table grape and 225,000 acres of raisin-type grapes) leads the nation in grape production with 89% of the total. In 2007, grapes were the number two commodity in the state, based on a dollar value of \$3.08 billion dollars, and were among the top three commodities produced in 15 California counties. The retail value of California was valued at \$16.5 billion in 2006. Additionally, EGVM is known to feed on close relatives of plants listed as threatened or endangered in the United States and presents a potential threat to perhaps 24 species, some of which are known to occur only in California. To protect this source of revenue and the environment, California must do everything possible to prevent the spread of EGVM in the State.

The Secretary adopts this regulation pursuant to the authority in Food and Agricultural Code Section 407, "the director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce," and Section 5322, "the director may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in Section 5321.

Like all quarantine actions, the intended effect of this quarantine was to prevent the artificial spread of the pest. Artificial spread, such as moths hitchhiking on equipment, clothing or plant material has the potential to spread the pest rapidly throughout the state, whereas the natural spread of the pest would be very gradual. It is necessary to immediately regulate movement of hosts that can carry the fly from, into and within the infested areas and buffer zones to protect California's agricultural industry.

Emergency Rulemaking Procedures

"'Emergency' means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." Government Code Section 11342.545. If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency,

the regulation may be adopted as an emergency regulation. Government Code Section 11346.1(b)(1).

In this document the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Government Code Section 11346.1(b)(2).

Since the Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1), the provisions of Government Code Section 11346.4(a)(2) do not appear to be applicable to this emergency action.

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5.

Project Description

This proposed emergency action will expand the regulated quarantine areas for EGVM and will include the new detection sites as epicenters and a buffer zone which extends approximately five miles in each direction from the epicenters. A buffer zone is necessary because the moth can spread naturally (as well as being spread artificially on infested hosts). The proposed boundary lines were drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the Sonoma County Agricultural Commissioner. The criteria for determining quarantine boundaries around an epicenter was based upon the information contained in the Final Report of the International Technical Working Group for the European Grape Vine Moth in California, released February 10, 2010. An epicenter is defined as an egg, larva or pupa found in the environment, or two male moths trapped within three miles of one another and within one life cycle.

The proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of EGVM to noninfested areas.

The effect of the amendment of this regulation will be to implement the State's authority to perform quarantine activities against the EGVM in these new areas of Sonoma County. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the Sonoma county agricultural commissioner. The amendment will expand the regulated areas in Sonoma County by approximately 75 square miles, for a total of approximately 1,871 square miles. It is immediately necessary to implement quarantine actions in order to prevent the artificial spread of EGVM to the uninfested areas of California.

Control measures for EGVM include: insecticides, biological control using *Bacillus thuringiensis* (one study showed 75-90% control), mating disruption (very expensive and only effective if used region wide) and sterile insect technique (not yet reached general commercial application).

Emergency Defined

"Specific actions necessary to prevent or mitigate an emergency" are exempt from the California Environmental Quality Act [CEQA]. Public Resources Code Section 21080(b)(4). "Emergency means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." Public Resources Code Section 21060.3.

Evidence of Emergency

The EGVM has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. Should the Department not take these actions, the EGVM could cause catastrophic losses to not only California's table and wine-grape industries but the industries which rely on the regions scenic beauty and international reputation as a tourist destination.

Additionally, the USDA cannot regulate less than the entire State unless the State has a quarantine regulation which is substantially the same as what the federal quarantine requirements are or will be. Now that the USDA has confirmation of EGVM in California, a federal order or quarantine regulation restrictions are imminent. Should USDA quarantine all of California, it would have serious repercussions on our ability to export any EGVM host material to other states or countries. For instance, both Canada and Mexico are major trading partners with California. Canada has already prohibited the importation of grapes and olives, and placed restrictions on stonefruit, kiwi, persimmon, pomegranate and berries from EGVM areas in California. Mexico has prohibited the importation of any host material from EGVM counties. Therefore, it is necessary to amend this regulation as an emergency action.

Background

EGVM are found in southern Asia, Europe, North Africa, Anatolia, the Caucasus and in South America (Chile where it was first identified in 2008). Adult EGVM are 6 to 8 mm long with a wingspan of about 10 to 13 mm. However, their size is greatly affected by larval food quality. The first flight of adults occurs in spring when daily average air temperature is above a minimal threshold temperature of 10°C for 10 to 13 days. High temperature (over 20°C) and low humidity (40-70% relative humidity) provide optimal conditions for moth activity. The second flight period begins in summer. Adults may be hard to discover during the day and may be noticed only when they take flight after being disturbed. Within a day or two of mating, females begin to oviposit on the blossoms, leaves, and tender twigs of grapevines. The female lays 300 or more eggs at a rate of 35 per day. First generation eggs are laid on the flower buds or pedicels of the vine while second generation eggs are laid on individual grapes. Eggs hatch in seven to eleven days in spring and three to five days in summer. The number of generations in a given area is fixed by photoperiod together with temperature. The moth achieves two generations in northern cold areas and usually three generations in southern temperate areas, but as many as five generations have been reported.

Larvae develop in four to five weeks in spring and two to three weeks in summer. Pupation lasts nine to twelve weeks in spring, five to seven days in summer, and up to six months in winter.

The EGVM is a serious pest in warm vine-growing countries. Damage by EGVM makes berries attractive to other insects and predisposes the fruit to fungal infection. Larval boring may promote a number of fungal rots, including *Aspergillus*, *Alternaria*, *Rhizopus*, *Cladosporium*, *Penicillium* and especially, grey rot caused by *Botrytis cinerea*. Loss of up to one-third of the vintage has been reported in areas of the Soviet Union, Syria and Yugoslavia. Losses in Israel sometimes reach 40 to 50 percent among table grapes and up to 80 percent for wine grapes. Further loss is due to the time and labor spent in cleaning the grape bunches. When infestations are heavy, work days spent in cleaning the fruit account for 30 to 40 percent of the time of those involved in harvesting.

Losses in grapes produced for raisins and table grapes are expected to be higher than for wine grapes. Additionally, fresh table grapes will likely face restrictions imposed by some trading partners.

There have been 21 interceptions of EGVM at U.S. ports of entry between 1984 and 2007. All but one interception came from baggage. Most interceptions were live larvae on grapes but interceptions also occurred on persimmon and plum (once each) and twice on pomegranates. The most probable method of EGVM movement within California is human-aided on equipment, fruit or infested propagative material. Though larvae are active, their movement is usually limited to between berry clusters, and virgin females' movement rarely exceeds 80 m.

On September 15, 2009, DNA analysis confirmed a suspect EGVM larva taken from a trap in Oakville, Napa County, California. This was an unexpected occurrence as it was the first identification of EGVM in the United States. Furthermore, the September 15, 2009 DNA confirmation caused the Department to re-examine an unidentified larva taken from a trap at the

same location on September 17, 2008. DNA sequencing information for EGVM was not available until fall of 2009. With this information on hand, the Department confirmed the 2008 find as EGVM, indicating that an infestation had been present in that area for as long as a year. Additionally, crop damage was reported in the area in 2008 and vineyards were treated for an unknown pest in 2008 and 2009. Significant crop damage was reported in 2009 and at least one grower lost his entire crop. As of June 2010, the estimated minimum fruit value loss for Napa County was \$454,439 and the estimated wine value loss was \$3,333,212. The losses to fresh market table grapes which are not processed would be substantially higher. Thus, this pest presents a clear, imminent danger to the grape industry in California.

Following the identification of EGVM, Department staff began an intensive spoke and wheel delimitation trapping program around the find site and on the border with Sonoma County, and also adopted Section 3437, European Grapevine Moth Interior Quarantine as an emergency action which was effective on March 3, 2010.

The Department also adopted an EGVM eradication regulation, Section 3591.24, as an emergency action and has continued to systematically search for all life stages of EGVM. Continuing this search throughout the EGVM's first generation was necessary in order to determine the extent of the EGVM infestation. The Department is using the same triggers for establishing or expanding EGVM quarantine areas as it has used for the light brown apple moth: the detection of eggs, larva, pupa or two adult moths within three miles of each other and within one life cycle.

EGVM detections in 2010 have led to several expansions of the original quarantine areas in Napa and Sonoma counties; as well as creating new quarantine areas in Fresno, Mendocino, Merced and Solano counties. It is believed that the infestations in Fresno, Mendocino, Merced and Solano counties are due to artificial spread that occurred prior to the establishment of the

quarantine since the number of moths identified in these areas is a total of 86 versus over 99,000 detections in the Napa/Sonoma area.

Reference Material

USDA/APHIS Federal Domestic Quarantine Order, *Lobesia botrana* (European Grapevine Moth), DA-2010-25, dated June 22, 2010.

Phytosanitary Advisory No. 11-2010, dated June 21, 2010, California Department of Food and Agriculture.

European Grapevine Moth 2009 Napa County Winegrape Fruit and Wine Value Losses, June 2010.

Second Report of the International Technical Working Group for the European Grape Vine Moth (EGVM) in California, Final – May 14, 2010.

Letter dated June 8, 2010 from Steven Hajik to A.G. Kawamura.

Letter dated May 20, 2010 from David Robinson to A.G. Kawamura.

Letter dated May 4, 2010 from Carol N. Hafner to A.G. Kawamura.

Memorandum dated April 29, 2010, from Tony Linegar to A.G. Kawamura.

Memorandum dated April 27, 2010, from Jim Allan to A.G. Kawamura.

Letter dated April 21, 2010 from Cathy V. Neville to A.G. Kawamura.

Memorandum dated April 6, 2010, from David R. Whitmer to Nicholas Condos.

Email dated February 18, 2010, from Eileen Y. Smith to Helene Wright, and its attachments.

Phytopsanitary Advisory No. 02-2010 dated February 16, 2010, California Department of Food and Agriculture.

Final Report of the International Technical Working Group for the European Grape Vine Moth (EGVM) in California, dated February 10, 2010.

Email dated February 8, 2010, from Kevin Hoffman to Stephen Brown and its attachment.

Email dated February 8, 2010, from John Hooper to Stephen Brown and its attachment.

Email dated February 4, 2010, from Eileen Y. Smith to Helene R. Wright and its attachment.

Interim Report of the International Technical Working Group for the European Grape Vine Moth (EGVM) in California, January 11, 2010.

Email dated December 23, 2009, from Eileen Y. Smith to Helene R. Wright, and its attachments.

Email dated December 15, 2009, from Stephen Brown to Susan McCarthy, and its attachment, "The European Grapevine Moth."

Electronic Code of Federal Regulations (*e*-CFR), Title 7, Part 305, dated October 13, 2009.

Grape Berry Moth Napa/Portion of Sonoma County Ring Survey 2009, California Department of Food and Agriculture.

New Pest Advisory Group (NPAG), Plant Epidemiology and Risk Analysis Laboratory Center for Plant Health Science & Technology, October 14, 2009.

Press Release, National Agricultural Statistics Service, October 9, 2009.

California Grape Acreage Report, 2008 Summary, United States Department of Agriculture.

Agricultural Statistical Review, California Agricultural Resource Directory, 2008-2009.

Mini Risk Assessment, Grape berry moth, *Lobesia botrana*, (Denis & Schiffermuller) [Lepidoptera: Tortricidae], September 5, 2003. Robert C. Venette et. al., Department of Entomology, University of Minnesota.

Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 407 and 5322, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322).

Section 3437. European Grapevine Moth Interior Quarantine

The effect of the amendment of this regulation will be to implement the State's authority to perform quarantine activities against the EGVM in this new area Sonoma County. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the Sonoma county agricultural commissioner. It is immediately necessary to implement quarantine actions in order to prevent the artificial spread of EGVM to the uninfested areas of California. The amendment will expand regulated area in Sonoma by approximately 75 square miles for a total of approximately 1,871 square miles.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3437 do not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Sonoma County Agricultural Commissioner requested that these changes to the regulation be made.

Cost Estimate

The Department has also determined that the regulations will involve no additional costs or savings to any state agency because initial funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.